

UNITED STATES

Y.

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**INTERIM ORDER:
GOVERNMENT REQUEST FOR
LEAVE TO FILE PROTECTIVE
ORDER(S)**

DATED: 28 March 2012

1. an opportunity to file a motion for a protective order or multiple protective orders under RCM 701(g) and RCM 806(d); and

2. The Defense via email dated 23 March 2012, 1745 and 1803 advised the Government of its intent to publish on the internet all previous Defense filings with the Court (without enclosures) and proposed Defense filings for the next Article 39(a) session (24-26 April 2012) unless subject to a protective order by the Court. (The emails are attached to this order as Attachment A.)

3. A pleading is “filed” with the Court when it is identified as an exhibit on the record at an Article 39(a) session. Pleadings served on the opposing party that have not been identified on the record at an Article 39(a) session are “proposed filings”.

4. This Interim Order is issued IAW MRE 505(g) and (h), MRE 506(g) and (h), RCM 701(g) and RCM 806(d), and *Seattle Times v. Rhinehart*, 104 S.Ct. 2199 (1984). This Interim Order provides procedures for the Government to request protective order(s) prior to any public release of Defense Court filings or proposed filings. The Court finds this Interim Order necessary under the above authorities. The Government has provided the Defense both classified information and government information subject to protective order under MRE 505(g)(1) and MRE 506(g). This Court has issued a protective order for classified information provided to the Defense in discovery. (Protective orders are attached at Appendix B). The Defense accepted such

discovery and agreed to comply with the protective orders. There have been two classified information spillage incidents to date in this case.

5. This Interim Order applies to all previous Court filings and any pleadings proposed for Court filing during the Article 39(a) session currently scheduled to be held on 24-26 April 2012.

INTERIM ORDER (IO):

1. The Government request to file a motion for a protective order or multiple protective orders prior to public release of Defense Court filings or proposed Court filings is **GRANTED** as provided below.

2. The Defense will notify the Government of each Defense Court filing or proposed filing intended for public release. Defense will provide the Government with the original filing and the redacted filing intended for public release.

3. Government motions for protective order will:

a. address each Defense Court filing or proposed Court filing individually and identify, with particularity, each portion of the filing to which the Government objects to public release and the legal basis for each objection to public release.

b. provide proposed findings of fact for the Court with respect to each portion of each filing to which the Government objects to public release.

4. Suspense Dates for Defense Court filings and proposed filings the Defense intends to publicly release:

a. Defense Appellate Exhibits filed with the Court to date and proposed Court filings served on the Government on or before **29 March 2012:**

2 April 2012 – Defense notifications to the Government IAW IO paragraph (2);

17 April 2012 - Government objections to public release and motion(s) for protective order providing the Court with information ordered in IO paragraph (3);

20 April 2012 – Defense Response to Government Motions for Protective Order.

b. Defense responses to Government motions served on the Government on or before **12 April 2012:**

12 April 2012 - Defense notifications to the Government IAW IO paragraph (2);

17 April 2012 - Government objections to public release and motion(s) for protective order providing the Court with information ordered in IO paragraph (3);

20 April 2012 Defense Response to Government Motions for Protective Order.

c. Defense replies served on the Government on or before **17 April 2012:**

17 April 2012 - Defense notifications to the Government IAW IO paragraph (2);
19 April 2012 - Government objections to public release and motion(s) for protective order providing the Court with information ordered in IO paragraph (3);
20 April 2012 Defense Response to Government Motions for Protective Order.

5. The Defense will not publicly release any Defense Appellate Exhibit or proposed filing with the Court to which the Government objects until after the Government motions for protective order are addressed at the Article 39(a) session 24-26 April 2012.


6. The Defense will not disclose any information known or believed to be subject to a claim of privilege under MRE 505 or MRE 506 without specific Court authorization. Prior to any disclosure of classified information, the Defense will provide notice under MRE 505(h) and follow the procedures under that rule.

7. Personal identifying information (PII) will be redacted from all Defense filings publicly released. PII includes personal addresses, telephone numbers, email addresses, first 5 digits of social security numbers, dates of birth, financial account numbers, and the names of minors.

8. To protect the safety of potential witnesses all persons who are not parties to the trial shall be referenced by initials of first and last name in any Defense filing publicly released.

9. For future Defense filings with the Court where the Government moves for a protective order preventing public release, the Court proposes the procedures in the draft protective order at Attachment C. Objections to the proposed procedures will be addressed at the Article 39(a) session 24-26 April 2012.

So **ORDERED**: this 28th day of March 2012.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit